

## DEPARTMENT OF STATE REVENUE

03-20130689P.LOF

**Letter of Findings Number: 03-20130689P**  
**Tax Administration**  
**For Tax Period October 2013**

**NOTICE:** [IC 6-8.1-3-3.5](#) and [IC 4-22-7-7](#) require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.

**ISSUE****I. Tax Administration – Penalty.**

**Authority:** [IC 6-8.1-10-2.1](#); [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a ten percent penalty.

**STATEMENT OF FACTS**

Taxpayer is an Indiana corporation. The Indiana Department of Revenue ("Department") determined that Taxpayer had not timely remitted withholding tax for the tax period October 2013. The Department issued proposed assessments for a ten percent negligence penalty and interest. Taxpayer protests the imposition of the penalty. An administrative hearing was held, and the following Letter of Findings results. Further facts will be supplied as required.

**I. Tax Administration – Penalty.****DISCUSSION**

The Department issued a proposed assessment for a ten percent negligence penalty and interest for the tax period October 2013. Taxpayer protests the imposition of the penalty. The Department will determine whether the penalty imposed shall be waived.

A taxpayer who "fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment . . . is subject to a penalty." [IC 6-8.1-10-2.1](#)(a). The Department shall waive the penalty if the taxpayer demonstrates that the failure to pay outstanding taxes "was due to reasonable cause and not due to willful neglect." [IC 6-8.1-10-2.1](#)(d); see also [45 IAC 15-11-2](#). The taxpayer may demonstrate reasonable cause by showing affirmatively that it used "ordinary business care and prudence" in failing to pay the outstanding taxes by their due date. Whether a taxpayer demonstrates reasonable cause for penalty purposes is a fact-sensitive question and determined on a case-by-case basis. [45 IAC 15-11-2](#)(b) and (c).

In this case, although Taxpayer has shown that it has improved its payment history over the last year, it has not affirmatively demonstrated that it had a reasonable cause for its failure to pay the proper amount of withholding tax for the tax period in question, October 2013, by its due date. Consequently the penalty shall not be waived, and Taxpayer's protest is respectfully denied.

**FINDING**

Taxpayer's protest is respectfully denied.

*Posted: 03/26/2014 by Legislative Services Agency*  
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